IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO. 3623 OF 2004

Shri Maruti Devappa Marapure
since deceased through his Lrs.
Smt. Shakuntala Maruti Marapure & Ors. ...Petitioners.
Vs.
Suresh Tamanna Vadd & Anr. ...
Respondents.

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Mr. V. G. Mujumdar for the Petitioners.
Mr. S. S. Patwardhan for Respondent No.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 17, 2005.

P.C.:

A decree for eviction has been passed under Section 13(1)(i) of the Bombay Rents, Hotel and Lodging Rates (Control) Act, 1947, on the ground that the premises being land, such land is reasonably and bonafide required by the landlord for the erection of a new building. The Appellate Court has noted that the contention of the landlord that the premises were required in order to construct a new building was not seriously challenged. That apart, both the Courts have found that there is adequate and reliable evidence in support of the plea of the landlord. Both the

landlord and his Civil Engineer stepped into the witness box. The landlord deposed with reference to the need of his family. The Consulting Engineer who had prepared an estimate of costs for the construction of the building over the suit property, also gave evidence. On this aspect, the finding is that the evidence led is sufficient. However, what has been urged is that the suit under Section 13(1)(i) was not maintainable. It was urged that the premises now consist of a shed which has been constructed by the tenant and a suit should have been filed under Section 13(1)(g) on the ground of the bonafide requirement of the landlord. It is common ground between Counsel that the premises when they were let out consisted of open land. That being the position, a suit under Section 13(1)(i) was maintainable. Though a faint attempt has been made to urge that the tenant subsequently constructed a shed and that he is a tenant now of shed that was constructed, Counsel for the Petitioner, however, fairly stated that the pleadings are entirely silent on such a case. That being the position, the interference of this Court under Article 227 of the Constitution is not warranted. There is no merit in the petition which is accordingly dismissed.

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